

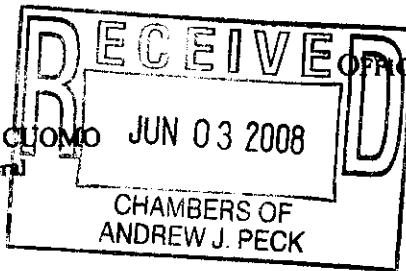


STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC#

DATE FILED: 6/4/08

ANDREW M. CUOMO
Attorney General



LESLIE G. LEACH
Executive Deputy Attorney General
Division of State Counsel

JUNE DUFFY
Assistant Attorney General in Charge
Litigation Bureau

June 3, 2008

VIA FACSIMILE

The Honorable Andrew J. Peck
United States Magistrate Judge
United States District Court
500 Pearl Street, Room 1620
New York, New York 10007-1312
Fax #: (212) 805-7933

Re: Anderson v. SONY, OCA, 07-CV-9599 (SAS)

Dear Judge Peck,

Please allow this letter to clarify a statement made by plaintiff's counsel in her June 2, 2008, application for the adjournment of today's discovery conference. In her letter, counsel states that defendants had "no objection to [the] request for an adjournment." Counsel, however, did not inform the court that defendants agreed to the extension *on the condition* that new counsel enter early enough so as to complete discovery by the August 11, 2008, cut off without undue difficulty, or that an extension of the discovery deadline be in prospect. Correspondence to counsel expressing the conditions and indicating plaintiff's consent to the conditions are attached.

Our limited consent to an adjournment was influenced by Ms. Xaba's being plaintiff's daughter. Early in the case, indications were that Ms. Xaba's representation would be temporary.

Since plaintiff's application was granted without the prospect of an additional discovery extension, we hereby express defendants' desire to quickly resolve the underlying discovery dispute and resume discovery. Defendants will be prejudiced by delay in resolving defendants' discovery needs, including the deficiencies by plaintiff presented in our letter to Judge Scheindlin dated May 27, 2008, and the taking of plaintiff's deposition. Rather than "take our chances" on when new counsel may enter the case, we would prefer the conference be put back on the calendar or that a very

MEMO ENDORSED

6/1/08 at 9:30 AM in Courtroom 20. Plaintiff's new counsel should attend if fully up to speed - did Mr. Peck want attend. He can't be after 11:30 unless let new counsel attend 11:30.

SO ORDERED:

Hon. Andrew Jay Peck
United States Magistrate Judge

Division of State Counsel • Litigation Bureau
20 Broadway, New York, N.Y. 10271-0332 • Phone (212) 416-8610 • Fax (212) 416-8075 • Not For Service of Papers
<http://www.oag.state.ny.us>

BY FAX

short deadline be set for the entry of new counsel, or that an extension of the discovery deadline be considered.

Respectfully submitted,



WESLEY E. BAUMAN
Assistant Attorney General
(212) 416-6296

Encls. a/s

cc: Tembani S. Xaba, Esq. (By Fax w/ encls. a/s)
Fax#: (212) 222-2074

WesleyE Bauman - Anderson v. The State of New York, et al., 07 Civ. 9599 (SAS)

From: "Tembani S. Xaba" <tembani@earthlink.net>
To: WesleyE Bauman <WesleyE.Bauman@oag.state.ny.us>
Date: 6/2/2008 4:55 PM
Subject: Anderson v. The State of New York, et al., 07 Civ. 9599 (SAS)

Mr. Bauman:

Plaintiff is presently in the process of retaining new counsel and, as a result, we will be requesting an adjournment of the discovery conference scheduled for tomorrow, June 3, 2008 at 4:00 p.m. Please advise as to whether Defendants would object to an adjournment of tomorrow's conference, subject to the Court's decision. Thanks.

Tembani S. Xaba

From: WesleyE Bauman
To: Xaba, Tembani S.
CC: Adlerstein, Lee
Date: 6/2/2008 5:34 PM
Subject: Re: Anderson v. The State of New York, et al., 07 Civ. 9599 (SAS)

Ms. Xaba:

We would agree to an adjournment of tomorrow's discovery conference on the condition that new counsel enter early enough so as to complete discovery by the end of the scheduled discovery deadline without undue stress or that extension of the discovery deadline be in prospect.

Wesley E. Bauman
Assistant Attorney General
New York State Office of the Attorney General
Litigation Bureau
120 Broadway, 24th Floor
New York, NY 10271
Phone (212) 416-6296
Fax (212) 416-6075

The information contained in this message and any attachments to this message is privileged and confidential information intended only for the use of the individuals or entities named as addressees. If the reader of this message is not the intended recipient or the employee, agent, or service-provider responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this message is strictly prohibited. If you have received this communication in error, please immediately notify the sender by telephone. Thank you.

>>> "Tembani S. Xaba" <tembanl@earthlink.net> 6/2/2008 4:55 PM >>>

Mr. Bauman:

Plaintiff is presently in the process of retaining new counsel and, as a result, we will be requesting an adjournment of the discovery conference scheduled for tomorrow, June 3, 2008 at 4:00 p.m. Please advise as to whether Defendants would object to an adjournment of tomorrow's conference, subject to the Court's decision. Thanks.

Tembani S. Xaba

From: Wesley E. Bauman
To: Xaba, Tembani S.
Date: 6/2/2008 6:14 PM
Subject: Re: Anderson v. The State of New York, et al., 07 Civ. 9599 (SAS)

Ms. Xaba:

Please make sure that in any representation or correspondence to Magistrate Peck that you refer to our position with regard to the adjournment as stated in our previous correspondence and our earlier telephone conference (i.e. that our agreement is contingent on the extension of the discovery deadline or if no extension is given, that discovery can be completed in the allotted time frame, without undue stress). Thank you.

Wesley E. Bauman
Assistant Attorney General
New York State Office of the Attorney General
Litigation Bureau
120 Broadway, 24th Floor
New York, NY 10271
Phone (212) 416-6296
Fax (212) 416-6075

The information contained in this message and any attachments to this message is privileged and confidential information intended only for the use of the individuals or entities named as addressees. If the reader of this message is not the intended recipient or the employee, agent, or service-provider responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this message is strictly prohibited. If you have received this communication in error, please immediately notify the sender by telephone. Thank you.

>>> "Tembani S. Xaba" <tembani@earthlink.net> 6/2/2008 4:55 PM >>>

Mr. Bauman:
Plaintiff is presently in the process of retaining new counsel and, as a result, we will be requesting an adjournment of the discovery conference scheduled for tomorrow, June 3, 2008 at 4:00 p.m. Please advise as to whether Defendants would object to an adjournment of tomorrow's conference, subject to the Court's decision. Thanks.

Tembani S. Xaba

WesleyE Bauman - Re: Anderson v. The State of New York, et al., 07 Civ. 9599 (SAS)

From: "Tembani S. Xaba" <tembani@earthlink.net>
To: WesleyE Bauman <WesleyE.Bauman@oag.state.ny.us>
Date: 6/2/2008 11:23 PM
Subject: Re: Anderson v. The State of New York, et al., 07 Civ. 9599 (SAS)

Mr. Bauman:

As you may have noticed, my office had already sent the fax to Magistrate Peck by the time this email came through. If you feel the need, you may of course follow-up with your own letter (but of course, you would need to inform Magistrate Peck that I had already stated to you that plaintiff had consented to your conditions).

Tembani S. Xaba

-----Original Message-----

From: WesleyE Bauman
Sent: Jun 2, 2008 8:14 PM
To: "Tembani S. Xaba"
Subject: Re: Anderson v. The State of New York, et al., 07 Civ. 9599 (SAS)

Ms. Xaba:

Please make sure that in any representation or correspondence to Magistrate Peck that you refer to our position with regard to the adjournment as stated in our previous correspondence and our earlier telephone conference (i.e. that our agreement is contingent on the extension of the discovery deadline or if no extension is given, that discovery can be completed in the allotted time frame, without undue stress). Thank you.

Wesley E. Bauman
Assistant Attorney General
New York State Office of the Attorney General
Litigation Bureau
120 Broadway, 24th Floor
New York, NY 10271
Phone (212) 416-6296
Fax (212) 416-6075

The information contained in this message and any attachments to this message is privileged and confidential information intended only for the use of the Individuals or entities named as addressees. If the reader of this message is not the intended recipient or the employee, agent, or service-provider responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this message is strictly prohibited. If you have received this communication in error, please immediately notify the sender by telephone. Thank you.

>>> "Tembani S. Xaba" 6/2/2008 4:55 PM >>>

Mr. Bauman:

Plaintiff is presently in the process of retaining new counsel and, as a result, we will be requesting an adjournment of the discovery conference scheduled for tomorrow, June 3, 2008 at 4:00 p.m. Please advise as to whether Defendants would object to an adjournment of tomorrow's conference, subject to the Court's decision. Thanks.

Tembani S. Xaba

FAX TRANSMITTAL SHEET



**ANDREW J. PECK
UNITED STATES MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT**

Southern District of New York
United States Courthouse
500 Pearl Street, Room 1370
New York, N.Y. 10007-1312

Fax No.: (212) 805-7933
Telephone No.: (212) 805-0036

Dated: June 4, 2008

Total Number of Pages: 7

TO	FAX NUMBER
Tembani Selepi Xaba, Esq.	212-222-2074
Lee Alan Adlerstein, Esq.	212-416-6009
Wesley Eugene Bauman, Esq.	212-416-6075

TRANSCRIPTION:

MEMO ENDORSED 6/3/08

The conf. is re-scheduled for 6/12 at 9:30 a.m. in Courtroom 20D. Plaintiff's new counsel shall attend if fully up to speed and/or Ms. Xaba must attend. The Court can defer plaintiff's issues but needs to address defendant's issues!

Copy to: Judge Shira A. Scheindlin